INFORMATION

For Dame Helenor, Issobel, *and* Margaret Nicolsons, *Sir* John Schaw *of* Greenock, *Sir* James Dumbar *of* Mochrum, *and Mr.* Thomas Nicolson *younger of* Balcaskie *their Husbands.*

against

Sir Thomas Nicolson *of* Tillicultrie.

THe Estate of *Carnock* and *Plane* being purchased by Sir *Thomas Nicolson*, he settled the same in favours of himself and his Heirs whatsomever, and Sir *Thomas* his eldest Son having succeeded as his Heir of Line, and being Minor, least he might be injured by his Transactions, and that he might be governed and advised by his Friends, he choices Sir *Thomas Hope* of *Craighall*, Sir *Alexander Gibson* of *Durie*, Sir *John Hope* younger of *Craighall*. Sir *James Foulis* of *Collingtoun*, Sir *Lewis Stuart* of *Kirkhill*, Sir *James Nicolson* of *Cockburn-peth*, *John Nicolson* of *Poltoun*, Mr. *Thomas Nicolson* Advocat, and Mr. *James Baird*, and Mr. *Robert Nicolson* Commissars of *Edinburgh* to be his Curators, whereupon there is an Act extracted under the hand of the Commissar-Clerk of *Edinburgh*, dated the 2*d* day of *April* 1646 years.

Sir *Thomas Nicolson* while Minor enters into a Contract of Marriage with Lady Margaret *Livingstoun*, Daughter to the Earl of *Linlithgow*, whereby he provids his Estate to the Heirs-Male of that Marriage, and obliges him and his Heirs-male and successors whatsoever, to pay Portions to the Daughters of that Marriage, but this Coutract though it bear with his Curators consent, yet it is not subscribed by them.

Sir *Thomas Nicolson* of *Tillicultrie* serves himself Heir-male in general to the said deceast Sir *Thomas* the Contracter, and the said Sir *Thomas* his Daughters, who were served Heirs of Line in special, and infeft to Sir *Thomas Nicolson*, thereafter Lord *Napeir* their Nephew Raise a Process against the said *Tillicultrie*, for declaring the Right of the foresaid Estate to belong to them as Heirs of Line, conform to their special Retour and Infeftment, and that by the foresaid Minut of Contract, there was no Alteration of the Succession from the Heirs whatsoever to the Heirs male, and that the Minut was Null being entered into by a Minor having Curators, without their consent, and the said *Tillicultrie* raises a Counter-declarator at his instance against them, for declaring the Estate to belong to him as Heir-male, because by the foresaid Contract, the same is provided to the Heirs-male of the Marriage, and in all the Obligements upon Sir *Thomas*, he obliges his Heirs-male in performance, which he would never have done if he had not designed them to have succeeded to his Estate.

These mutual Processes being long and fully debate, and much retarded by *Tillicultrie*, by the then prevailing influence, even to that rate, that the late King interposed when the Process was to be advised by the Lords, and by his Warrand caused his Advocat take up the same, where it lodged till the present Establishment of the Session, that the Action being again wakned, and of new fully heard and debate; The Lords found and declared, that there was no Alteration or Change of the Succession and former Settlement of the Estate of *Carnock* and *Plain* provided to Heirs whatsoever, from the saids Heirs whatsoever, to, and in favours of Heirs male, either exprest in, or imported by the foresaid Minut of Contract Matrimonial, betwixt the said Sir *Thomas Nicolson* and Lady *Margaret Livingstoun*, or yet expressed in, or imported by the Bond of Provision granted by the said Sir *Thomas Nicolson* to the said *Helener*, *Isobel Anna* and *Margaret Nicolsons* his Daughters, and fand and declared that the said deceast Sir *Thomas Nicolson* was Minor, the time of entering unto the foresaid Minut of Contract, and that the said Minut was entered into without his Curators subscribing the same; and that it is proven by the Act of Curatory produced; that the said Sir *Thomas* had Curators at the time, and that by the said Contract, the said Sir *Thomas* could not without Advice and Consent of his Curators alter the former Setlement of his Estate provided in favours of his Heirs whatsomever, to a Tailzie in favours of the Heirs-male: And that the foresaid Deed and alteration, albeit it had imported a Tailzie and Alteration of the Succession, which it

it did not, was void and null, and therefore found and declared that the said *Helenor*, *Isobel* and *Margaret Nicolsons*, Heirs Portioners of Line, in special served and retoured to the said *Thomas* Lord *Napeir*, and their Husbands foresaids for their Interests, have good and undoubted Right to the Lands and Baronie of *Carnock* and *Plain*, as the Decreet extracted thereupon, of the date the 3*d* day of *Feb.* 1691 years more fully bears.

Sir *Thomas Nicolson* of *Tillicoutrie* having protested for remeid of Law against the foresaid Sentence though several sessions of Parliament have been since, yet he never insisted therein, but the Heirs of Line were necessitat to apply to the Parliament, and procure a Warrand for citeing him to insist upon the grounds of his Appeal, which after he had much waved, was at last given in, and both Parties heard before the Committee for Privat Affairs.

The said Sir *Thomas* Procurators first urged, that the Contract was a plain Alteration of the Succession of that Estate from the Heirs whatsoever to the Heirs-male, and so that he was læsed by the Lords Interloquitor, for by the Contract he provides his *Lady* to the Baroney of *Plane*, and takes her bound to pay to his Heir-male what the same Baroney pays more than four thousand merks of yearly Rent. 2. He obliges his Heirs male and Successors in Warrandice of the said provision. 3. He obliges himself to provide his Estate to the *Heirs*-male of the Marriage, and obliges the Heir-male in payment of particulal Sums to the Daughters of that Marriage, and that the Contract should be extended by advice of Men of Law; from all which he alledged that it was evident, that by that Contract it was designed that the Estate should go to the Heirs-male, as was the common Custom of ancient Feus.

It is Answered for the Heirs of Line, That the *Succession* to Lands is determined by the Tenor of the former Infestments, and which no design nor resolution can alter, without an plain Resignation or Obligement to that effect: And it is not contraverted but Sir *Thomas Nicolson* the Acquirers Infestment is to the Heirs whatsomever, and so the Service and Retour of the Heirs of Line, as Heirs to the Lord *Napeir* their Nephew, is conform and agreeable to the Infestments of that Estate; and so declares and compleats their Right, unless an plain Obligement or Resignation to the contrair did appear. And as to the Contract produced and debated upon, there is not the least shaddow of change or alteration therein exprest or imported, for though the Contract obleige the Heirs Male, yet that is nothing, because all Debitors and Obligants, both in their Provisions to their Ladies, and their Bonds to their Creditors, bind their Heirs, as well Male of Tailzie, Conquest and Provision, as of Line, which is in order to the Creditors security, but has no relation or design to alter the Succession of the person Bonud, and it does not import, that by the same Contract the *overplus* Rent is to be payed to the Heir Male, because by the Contract. he provided the Estate to the Heir Male of that Marriage, who exhilited, and who thereby had right to that *overplus* Rent, so that two things are necessarly to be considered: 1. That no Design to make a Tailze doth import a Tailzie, and therefore although the Contract had born, that the Contracter designed to have tailzied his Estate, which is not done, or by any Write under his Hand, had exprest such an Intention, yet if there had been no express Obligement upon him and his Heirs whatsomever, in favours of himself, and his Heirs of Teilzie, no Lawyer will assert that there is a Tailzie implyed, for Tailzies being a cutting off the Natural and Legal Line of *Succession*, are not to be drawn from Conjectures or Intentions, but from positive Deeds; and the truth is, this Contract being writen upon the supposition and mistake that the ancient Securities were to Heirs Male, by the direction of a *Minor*, ignorant of his Affairs, without consent of his Curators, does not so much as import a remot intention to change the course of *Succession*. 2: All that in sense can be thought to be imported by that Minut, has happened and is fulfilled; Sir *Thomas Nicolson* had an Heir Male of that Marriage, who was likewise Heir of Line, and succeeded him, and the Lord *Napeir* succeeded to him again as Heir of Line; And since there was no Obligement upon the Heir Male, of that Marriage, or this Heir of Line to transmit his Estate to his Heirs Male, the Law did convey it to his Heirs of Line.

Whereas it was alleged that he took his Heirs Male bound to pay Portions to his Daughters, which is an Demonstration that he did not design his Daughters to succeed.

It was Answerd, that he having married the Earl of *Linlithgows* Daughter, the Earl and his Friends thought it reasonable, that the whole Estate should go to the Heirs of that Marriage, but that being refused by Sir *Thomas*, it has been concerted, that the Estate should go to the Heirs Male of that Marriage, And in case these failzied, and that Sir *Thomas* had Heirs Male of another Marriage, whereby the Daughters would be secluded from Succession, therefore he bound his Heirs Male in payment of the Portions to his Daughters; and *de facto*, his Son Sir *Thomas* did succeed: And after Sir *Thomas* the Contracter is fourty Years of age, gives an Bond of Provision in favours of these Daughters, whereby he binds his Heirs whatsomever, which is a sufficient Document that he neither understood nor designed any alteration of his Succession by the former contract, which could not be done but *habili modo*, by plain obligement to that purpose and resignation.

What ever Reason there might be where *Feues* were granted gratuitously for Military Service, that the Masculine Line should succeed, yet this being *feudum novum* purchased by Sir *Thomas Nicolson*, to him, and his Heirs, whatsomever the Tenor of his Infeitment is the *Rule* of Succession, and takes of all Presumption in favours of the Heir-male.

It

It were tedious and unneceſſary to make Commentaries upon all the ſeveral Clauſes of the Contract wherein mention is made of Heirs-male, ſeing the moſt conſiderable Clauſes have been already taken notice of, and the repeating of Heirs-male ſo often, did partly proceed from the miſtake of the firſt Infeftments, and partly from the expreſs Intention that the Contracter had; that his own Heirs-male, tho of an other Marriage, ſhould ſucceed before his Daughters of the Marriage with my Lady *Margaret Livingſtoun*, and it is not to be imagined, that the Ladies Honourable Relations would have agreed to any ſettlement, whereby the Daughters of that Marriage would have been excluded from Succeſſion, if Sir *Thomas* had died without Male Iſſue, and if the Contracter had had any ſuch deſign, it had been eaſie in the Courſe of twenty years life that followed afterwards, to have compleated it, which he never did.

As there is no alteration of the Succeſſion expreſt, or imported from this Contract, ſo the Lords likewiſe found the ſame null, as being entered into by a Minor, having Curators without their Conſent.

Againſt which Branch of the Decreet, *Tillicoutrie* urged. 1. That it was not proven that Sir *Thomas* was Minor, the Extract of his Age not being an ſufficient Probation. 2. The Act of Curatory did not prove, unleſs the Warrand thereof ſubſcribed by the Curators were produced. 3. It was not proven that the Curators were alive the time of the Contract. 4. Sir *Thomas* was not thereby leſed. 5. He did not revock *inter annos utiles*, but on the contrair, did homologat the ſame by granting the Bond of Proviſion to his Daughters.

To this it is Anſwered, that as the Contract does not in the leaſt inſinuat any Alteration of the Succeſſion from the Heirs whatſoever to the Heirs-male, ſo the ſame proves the Minority of Sir *Thomas* the Granter, in regaird it bears with conſent of his Curators, which is never adhibite but to Minors, and ſeing *Tillcoultrie* makes uſe thereof for his Tailzie, he muſt likeways make uſe of the ſame for proving the Minority, ſeing he cannot both approbat and reprobat the ſame Writ, and though the Extract of his Age bearing ſo many honourable witneſſes *in re tam antiqua*, be a ſufficient Probation, yet it is here more full, being adminiculat by this Contract, bearing with conſent of Curators, and by a Diſcharge granted by him *in anno* 1649, with conſent of his Curators to the Lord *Belhaven* of certain Annualrents, which proves his Minority that year, and ſo infallably in the year 1648 preceeding, in which the contraverted Minut of Contract is dated.

As to the ſecond, the Act of Curotory is produced, and the Decreet of the Lords opponed, bearing the ſame to have been compared with the Record, and to quadrat therewith, and to be marked in the Minut-book; and beſides all this, there is produced a Factory by the ſaid Sir *Thomas* with conſent of his Curators thereto ſubſcribing to *William Livingſtoun*, appointing him Factor *in anno* 1647 ſhortly after the ſaid Act of Curatory. 2. The Contract purſued upon *in anno* 1648 bears with conſent of his Curators. 3. The Diſcharge of Annualrents to *Belhaven* in *anno* 1649, is granted by him and his Curators, each of which *per ſe* do prove the Curatory, and fully aſtruct the Act and Acceptation.

As to the third, That it is not proven that the Curators were alive the time of the Contract.

It is Anſwered, That the Curators are preſumed alive, unleſs they had been proven dead, and here their being alive, appears by the Contract which bears with their conſent. 2. The Diſcharge to *Belhaven* is ſubſcribed by them one year thereafter 1649, which neceſſarily inferrs that they were alive the year preceeding 1648: And it is notour to many in the Parliament, that moſt of them were alive for many years thereafter, and Sir *James Fowls* of *Collington* is but lately dead.

To the fourth, That Sir *Thomas* was not thereby læſed, It is Anſwered, that the Deeds of *Minors* having Curators, without their conſent, are *ipſo jure* null, and ſo Læſion needs not be alledged, which has been ſo often decided, that the ſame is now become an uncontraverted Principle, as may appear by the Deciſion, the 7 *December* 1666, Sir *George Mckenzie contra Fareholm*, and the 25 of *December* 1667, *inter eoſdem*; And the 9 of *December* 1632, *Maxwel contra* the Earl of *Nithſdale*, and innumirable more Deciſions obſerved both by *Dury* and *Stair*; And if *Minors* having Curators were obliged to Inſtruct læſion in the deeds done without their conſent, then it were of no value or import to chooſe Curators, becauſe where læſion is inſtructed, *Minors* are reſtored: however even againſt theſe deeds to which the Curators conſent, but Curators being choſen, the want of their conſent to the *Minors* Deed, renders the Deed null. And the Law gives this Reaſon for having Curators, *Magis decorum & honeſtum eſſe in tempore occurrere & providere ne minores capiantur, quam ut aſſiduis in plorationibus tribunalia perſonent*, which fully ſignifies, that where they want Curators, they muſt apply to the Judicatories, but where they have Curators, that that application is prevented by the nullity of the deed: And in general, where ever the Law requires a ſpecifick Form or Solemnity in any act, if that Act be done without obſerving that Form or Solemnity it is null: Now it will not, nor cannot be contraverted, but that the Law requires that *Minors* having Curators ought to be authorized, when they enter into Contracts mutually obligatory, and of vaſt importance for their Families: And therefore the Contracter here being *Minor*, and having entred into a Contract without obſerving the Forms of Law, the Deed is unqueſtionably null, and the very contract it ſelf, if it did import a Tailzie as it does not, were a ſufficient læſion, being the alteration of the Succeſſion from the Heirs whatſomever, to the Heirs Male: And beſides, there is an other obvious læſion, for thereby Sir *Thomas* provides his Lady to her Jointure, though the Marriage diſſolve within the Year.

To

To the Fifth, That he did not Revock *inter annos utiles*, but Homologat the same, by granting a Bond of Provision to his Daughters.

To this it is answered, That the same is no ground of Appeal, because not alledged before the Lords, nor could be; for null Deeds need no Revocation. Deeds of Minors that require Revocation, are such as of their own nature subsist, and are Obligator: such as the Deeds of Minors wanting Curators, and the Deeds of Minors with the consent of their Curators. But the Deeds of Minors having Curators, without their Consent being *ipso jure* Null, *nullo tractu temporis possunt convalescere*. And no forraign Custom can regulat this Case, which is so fully and plainly regulat and determined by our Law.

As to the Homologation alledged upon. It is answered, 1. There is no Tailzie by the Contract. 2. The Bond of Provision granted on Death-bed, has no relation to the Tailzie, and so is no Homologation thereof. 3. Homologation is only inferred, where the Act of Homologation can be ascribed to no other Deed, but the Deed Homologat; but here Sir *Thomas* the Granter of the Bond of Provision does not Found the same upon the foresaid Contract, but upon the Tyes lying upon him by the Law of God and Nature to provide his Daughters, he having then an Heir-male of his own Body alive who did succeed him, his Daughters being absolutly unprovided: and so it is no Homologation of the Contract, but the Effect of his Duty. 2. The Bond clearly Insinuats the contrare, for the same binds his Heirs whatsomever, without any mention of his Heirs-male: And albeit it requires the Granters Son, or any other who should succeed to his Estate, to fulfil the Provisions to the Daughters; yet that doth not import, that there was a Tailzie, and the Daughters excluded. But the Granter having a Son at the time, who was to succeed him, and might have Children, who whither Male or Female, would have excluded his own Daughters, being the Representatives of the eldest Son; therefore he requires in general, all whoever should succeed him, to fulfil the Provisions to his saids Daughters.

This being Debate before the Committee for privat Affairs, it was their Opinion, that the Protest for remeid of Law at Tillicoultries Instance against the Co-heirs of Carnock, *be Rejected, and the Sentence of the Lords of Session do stand in Force.*

And now having gone through the Reasons of *Tillicoultries* Appeal, it remains to give some satisfaction to the Amusements that he hath insert in his Information. And first, whereas it was pretended, that this Tailzie was designed for preservation of the Memory of Sir *Thomas Nicolson*, which was indeed very worthy, and deserved to be represented; and that the Minut being to be extended at the sight of men of Law, no Lawyer would have Advised to extend it in any other Terms, than of a Tailzie to the Heirs-male. It is Answered, that if the design had been to continue, Sir *Thomas* his Memory it has been very ill laid; for the Lord *Napier* who was Sir *Thomas* Heir-male, lay under no Restraint not to change his Name, and smoother the Remembrance of his Family: and *Tillicoultries* Affairs give no Prospect that it can continue in the Name of *Nicolson*. And as to the Pretence, that a Lawyer would have extended the Minut in the Terms of a Tailxie to the Heirs-male. It is answered, it is likely enough indeed, that *Tillicoultries* Lawyers would now extend it so: but no Lawyer knowing the Provision of the Original Infeftments, could upon any Pretence of this Minut have fram'd a Tailzie; for it is observable, that in the whole Contract there is not an Obligement to provide, or resign in favours of the Heirs-male indefinitly; and therefore no body could have extended such an Obligement in their favours, without an extraordinary Byase. 2. Whereas it is pretended, that the Decreet of Session was carried by a casting Vote, and the best part of the Lawyers were against it; and therefore ought to have the less weight. It is answered, That this Alledgiance is equally false and Irrelevant, and therefore deserves very little Consideration; for the Business was not decided by a narrow Plurality; and if it had been a single Vote as is pretended; yet is a Decreet of Session, and ought to be of great Force, unless the same were found unjust, which it cannot for the Reasons foresaid.

In Respect whereof, the Decreet of the Lords of Session in favours of the Heirs of Line, ought to be sustained, and the Heir-male condemned in large Expenses, for Appealing from the Sentence of the saids Lords without Ground,

COPIE

Contract Matrimoniall, betwixt Sir *Thomas Nicolson*, and Lady *Margaret Livingstoun*.

AN Minute of an Contract Matrimonial, to be extended betwixt the Honourable parties following, To wit, *Sir Tho: Nicolson* of *Carnock* Knight, with advice & consent of Dam *Isobel Henderson* Lady *Carnock* his Mother & his Curators, under subscriving on the one part, and Lady *Margaret Livinstoun*, second Lawful Daughter to an Noble and Potent Earl, *Alexander* Earl of *Linlithgow*, Lord *Livinstoun* and *Callendar*, *&c.* With advice and consent of the said Noble Earl, *James* Earl of *Callender*, Lord *Livingstoun* of *Almond*, and *Falkirk* her Uncle, and of an Noble Lord, *George* Lord *Livingstoun* her Brother, and they for themselves and their own interests following; and the saids Noble Earl *Allexander*, Earl of *Linlithgow*, and *George* Lord *Livingstoun* his Son, taking the burden upon them for her, as Tutors, Guiders, and Administrators to her by the Law on the other part in manner after specified; That is to say, the saids Sir *Thomas* and Lady *Margaret*, with consent above mentioned, has accepted, and be their presents, accepts either of them, others to be their Lawful Spouses, and Faithfully promises and obliges them to Solemnize the said Bond of Matrimony betwixt them in face of Holy Kirk betwixt the date Hair of day of nixt to come, or sooner if both parties shall think expedient, in respect of the whilk Marriage, and of the summ of Money after mentioned, to be payed in name of Tochar good; The said Sir *Thomas*, with advice and consent of his said Mother and Curators above named, binds and obliges him, his Heirs and Successors with all possible diligence before the Solemnization of the said Marriage to infeft and cease the said Lady *Margaret* his promised Spouse in her Virginity in Liferent, during all the [illegible] of *Pitlie*, with manner, place, Houses biggings, Yeards, Orchyeards, Woods Fishings, Coals, Coalhoughs, Lyme, Lyme stone, parts, pendickles, and pertinents thereof whatsomever, lying within the Sherrifdom of *Sterling*; And that by his Two several Charters, containing preceipt of Seasin thereintil, and thereof, Bearing the holding to be of the said Sir *Thomas* his Heirs Male, and Successours in Fee, Blench Ferme for payment of an pennies Scots money at *Whitsunday* yearly, upon the ground of the saids lands in name of Blench Ferme, if the samen be required. And the other of the saids Charters, Bear and the Holding to be tred, The said Sir *Thomas* and his foresaids of his immediate Superiours of the saids Lands, sickike, and als freely in all respects as he holds the samen himself, and that either by resignation or Confirmation, as best shall please the said Lady *Margaret* and the saids Father, Uncle, and Brother, and for that effect to make particular Charters and procuratories of Resignation as oft, and whensoever he shall be desired thereto, & whilk Infeftment of the Lands aud others above written, to be made and granted to the said Lady *Margaret* in manner above contained, She with consent above mentioned accepts in Contentation to her of all other Conjunct fie Liferent terce Right whatsomever, whilk she may ask or crave or may fall to her of any other of the said Sir *Thomas* his Lands be decease, if it shall happen her to survive him with sufficient clause of Warrandice to be contained in the saids Charters. Likeas the said Sir *Thomas* be the Tenor hereof with consent of his Mother and Curators above named, now as if the saids Charters and Infeftments were alreadie past and perfected; and then as now binds & obleidges him his Heirs Male of Tailzie and provision, Assigneys and Successors, to warrand all and hail the saids lands and Barronries of plain parts pendicles and Pertinents thereof foresaid Lynud as said is, to be safe & sure to the said Ladie *Margaret* his promised Spouse in Liferent, during all the dayes of her Lifetime from all perrils Dangers, and inconveniencies may fall thereto at al hands, and against all deadly, and that the said Lady *Margaret* shall immediatly after his decease enter to the peaceable Possession of the saids Lands and pertinents thereof, uplifting of the Males and Duties of the samen, leting, using and Disponing therenpon as she shall think good, during her lifetime, and that notwithstanding of the said Sir *Thomas* his Death within a year after the said Marriage, and of any Law or Statute made or to be made in the contrair, and wherewith he with consent of his said Mother and Curators above named

NATIONAL LIBRARY OF SCOTLAND

has Dispensed, and be thir presents Dispenses for ever, providing the said Lady *Margaret* be comptable, and pay to his Heirs Male what the saids Lands shall pay, and be of more worth nor 4000 Merks Money, and sikike, with consent foresaid, to build upon the ground of the saids Lands to the said Ladie *Margaret*, at the sight of the saids Father, Uncle, or Brother, an sufficient dwelling House for her to remain in, agreeable to one of her qualitie and degree, and in like manner, the said Sir *Thomas*, with consent above mentioned, binds and oblidges him and his foresaids, That the Heirs Male to be procreat betwixt him and his said promised Spouse shall not only succeed to the hail Lands, Baronies, Heritages and summs of Money, whilk he presently has pertaining to him, but also to all and whatsomever he shall happen to conquess in the said Ladie *Margaret* her lifetime, in respect whereof, and for the better provision of the Heirs famale, that shall happen to be procreat betwixt him and his said future Spouse failzing of Heirs Male procreat betwixt them, And the said Sir *Thomas* with consent above written, Binds & oblidges him his Heirs Male & successors whatsomever thankfully to pay and deliver to the saids Heirs Famale if there be any, the Summ of

If their be two toeither of them the summ of and if their be three more, the summ of To be devided amongst them in manner following; That is to say, to the eldest the summ of And the rest thereof to be equaly devided amongst the rest of the saids Daughters or Heirs Famale, and that how soon, as it shall happen the saids Heirs Famale to come to the age of years compleat; during the whilk time the said Sir *Thomas* his Heirs Male and Assigneys whatsomever shall be bound and obliged to entertain the saids Heir female in Bed, Board, Abulziement and other things necessary according to their Estate and qualitie at the sight foresaid, for the whilk causes the said noble Earl *Alexander* Earl of *Linlithgow* and with advice and consent of the said Noble Earl *James* Earl of *Callendar* his Brother, and *George* Lord *Livingstoun* his Son, binds and obliedges him, his Heirs, Executors and Assigneys thankfully to content, pay and deliver to the said Sir *Thomas* his Heirs and Assigneys in name of Tochar-Good, with his said Daughter the summ of betwixt the date hereof, and the feast and Term of in the Year of GOD 16 years but longer delay, together with the summ of liquidate expeuces in case of failzie; Finally both parties are content, and consents that this present Minut be extended in ample form be advice of Men of Judgement, betwixt the date hereof and the day of next to come, and after the extension thereof both the saids Parties binds and obliges their Heirs and Successors to subscrive the same effably & lovingly, & the partie failzied obliges him & is foresaids, to pay to the partie observer and repair the summ of money above written for not performing of the Premisses. And for the more securitie both the saids parties are content that this present Minut; with the Contract to be extended hereupon be insert and Registrat in the Books of Consul and Session; and a Decreet of the Lords thereof interponed thereto with Letters of Horning on six days, and all other Executorials and Letters necessar in form as effeirs may pass thereupon, and to that effect constitutes their Procurators, In Witness whereof (written be *Robert Main* Servitor to Mr. *Andrew Ker* Sherriff and Town Clerk of *Linlithgow*) Both the saids Parties have subscrived thir Presents at *Linlithgow* & the twentie two & dayes of *August*, and the year of GOD One thousand six hundred and fourtie eight years; Before thir Witnesses *James* Lord *Ochiltree*, *William Drummond* of *Rickartoun*, Mr. *George Dundass* of *Mawer*, and *George Bell* Provost of *Linlithgow*, *Robert Stewart* Burgess thereof, and the said Mr. *Andrew Ker* Witnesses to the saids Sir *Thomas* Lady *Margaret*, Earl of *Linlithgow*, and his Ladies Subscriptions.

Double Bond of Provision,

Sir Thomas Nicolson *to his Daughters.*

BE it kend to all Men, be thir present Letters, Me Sir *Thomas Nicolson* of *Carnock* Knight; For as meikle as, *Helenor*, *Isobel*, *Anna*, and *Margaret Nicolsons*, my Lawful Daughters, are not provided to a Competance of Means, whereby they may (at their mature Age) have Marriadge, or otherwayes live in a Rank and Condition, according to their Birth; And seeing I am bound by the Law of GOD and Nature, to provide them according to my Ability and Estate. Therefore Wit ye me to be bound and ablidged, Likeas, I be the Tenor hereof, Bind and Oblidges me, my Heirs Executers and Successors to me, in my Lands and Heritages wha somever, to pay and deliver to my faids Daughters, the Summs of Money after specified, in manner at the times, and with the Provisions aftermentioned, every one of them their own parts, as is after devided. *To wit*, To the said *Helenor*, the Summ of twelve thousand Merks *Scots* Money, To the said *Isobel*, the Summ of ten thousand Merks, To the said *Anna*, the Summ of eight thousand Merks, and to the said *Margaret*, the Summ of six thousand Merks, Money foresaid, and that immediatly at their Age of Fifteen years compleat, or if it shall happen them to marry before that time, I Declare and Ordain the foresaids Provisions to be payed to them immediatly after their Lawful Marriadge, with the Provision and Condition alwayes, that in case it shall happen any of my faids Daughters to depart this mortal Life before their Marriadge, or within year and day after their Marriadge. In that Case, their Provision above specified, is and shall be declared void and null, and as if this present Bond had not been granted to the Daughter deceased, and that *Thomas Nicolson* my eldest Lawful Son, or any other my Heirs and Successors, shall not be bound and oblidged for the same, But that the foresaids Provisions of the Daughter or Daughters deceased, shall remain and abide with my said Son, or any other who shall succeed to me. And sicklike, That it shall not be Lawful to any of my faids Daughters to assign or leave their forenamed Provisions to any person or persons, in case they shall happen to decease before their Marriadge, under the whilk Provision and Condition this present Bond is granted, and no other wayes; And if it shall happen, that the forenamed Summs be not payed to my faids Daughters at the time, & in maner above; So in that case I obleidge me and my foresaids, To pay to them every one of them for their own parts, as is above exprest, the due and ordinar Annualrent of their faids Provisions, according to the Laws of this Kingdom, and that ay and while they be satisfied and payed of their several Summs abovementioned, and in regard that my faids Daughters have no mantenance and aliment at present, in case it should please GOD to remove me before they attain to their Age and years above specified; Therefore I obleidge me and my foresaids, to pay to them and every one of them, or to their Tutors in their Names, the Summ of two hundereth & fifty merks money foresaids yearly, frae the time of my decease, to their Age of teen years, or marriadge, in manner abovementioned. And sicklike, I obleidge and require the said *Thomas Nicolson* my Son, or any other who shall hapen to succeed to my Estate, and as they would expect the LORDS Blessing to prosper with them, That they obtemper, keep, fullfill and perform this present Bond of Provision to my faids Daughters; as they tender and respect their Wellfare, and as the Children gotten of my own Body, and that my Heirs and Successors object nothing against this present Bond, notwithstanding it be done and subscrived *in lecto egretudinis*. And farder, I will and declare that thir presents shall be reput, holden and sustained as a sufficient Evident, and tye upon my Heirs, Notwithstanding the samen be not a delivered Evident, and found to be in my Custodie after my decease, and seriously recommends to the Honourable Lords of his Majesties Council and Session, and other Judges Competent, that they sustain this present Bond, (as a Tye and Obleidgment upon my Heirs, in case they should object or come in the contrair hereof, And for the more Security, I am content thir Presents be Registrated in the Books of Council and Session, or other Books Competent, that Letter may be direct on six dayes, and Constitutes

Our Procurators, in witness whereof, I have subscrived thir presents, (written be *David More* Sherriff Clerk of *Stirling*) at *Carnock* the twenty first of *July*, One thousand six hundered and sixty four years, Before thir Witnesses, *William Livingstone* Fiar of *Kirkland*, and the said *David More*, *Sic Subscribitur*,

Tho: Nicolson, *Wm: Livingstoun* Witness, *David Moir* Witness.